Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

MARY WYATT,
PETITIONER,
vs.

STATE OF ALABAMA, DEPARTMENT OF HUMAN RESOURCES, ET AL.,
RESPONDENTS.

On Petition For Writ Of Certiorari
To The Supreme Court Of the State Of Alabama

PETITION FOR WRIT OF CERTIORARI

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58 pp

May a Licensed Day Care provider sue the State of Alabama, Department of Human Resources, because they violated her procedural due process rights under the 14th Amendment to the Constitution of the United States of America?

May a Licensed Day Care provider sue State of Alabama Employees in their official capacities, because they violated her procedural due process rights under the 14th Amendment to the Constitution of the United States of America?

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List of All Interested Parties

MARY WYATT,
Plaintiff,

vs.

ERIN WHEELER, AND ERIN WHEELER IN HER CAPACITY AS HEAD OF MOBILE COUNTY DHR, CATHERINE PHILLIPS, AND CATHERINE PHILLIPS IN HER CAPACITY AS AN EMPLOYEE OF MOBILE COUNTY DHR, STATE OF ALABAMA, DEPARTMENT OF HUMAN RESOURCES,
Defendants.

Honorable Herman Thomas
Circuit Judge
205 Government Street
Mobile, AL 36602

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Bowman v. Alabama Department of Human Resources, 857 F. Supp 1524 (M.D.Ala. 1994) pages 6,7

14th Amendment to the United States Constitution pages viii,6

Opinions Below

"Appendix E" will be published in the Southern Reporter. It is unknown if any other opinions below have or will be published.

(vii)

Jurisdiction

The final lower Court decision, "Appendix F", was decided on September 7, 2001. This petition was filed within 90 days of that decision, on December 6, 2001.

Constitutional Provisions Involved

The due process clause of the 14th Amendment to the United States Constitution.

Statement of the Case

Ms. Mary Wyatt has been a licensed family day care provider since February 14, 1992. Both her day and night licenses were to expire on February 14, 1998 (Appendix A, pages A9 and A10).

"The practice in Mobile County for the renewal of a daytime care/nighttime care license changed in 1997." Up until that time the application for renewal would be mailed to the licensee who would complete the application. The license worker would then pick up the license package when she visited the day care home for the renewal inspection.

In 1997 that practice was changed due to staff shortages at the Mobile County Department of Human Resources. As part of the new practice a letter was to be sent to the licensee notifying the licensee that due to serious reductions in staff the licensee would have to complete a self evaluation-application form and return it to the agency at least thirty days prior to the expiration of the license. These forms should have been mailed to the licensee approximately sixty days prior to the expiration of the license. However, from the evidence presented I find that Ms. Wyatt did not receive her letter and packet until March of 1998, which was after the February 14, 1998 expiration of her day and nighttime licenses. This letter stated in part that "we will attempt to renew all licenses as soon as possible, however we are aware that some of your licenses will expire before we have the opportunity to visit your facility. "Ms. Wyatt did not mail the completed license package back to the Department (Appendix A, page A10)".

The Department of Human Resources gave Mary Wyatt no notice of their intent to revoke her license, in violation of their own rules (Appendix G, page A41).

Following inspection visits on May 29, 1998 and July 13, 1998, Catherine Phillips wrote Mary Wyatt a letter on July 23, 1998, denying the renewal of her night-time license. Ms. Phillips correctly informed Ms. Wyatt that she was entitled to a fair hearing as a result of this adverse action. Ms. Wyatt timely requested a fair hearing (Appendix A, page A11).

On October 16, 1998, Erin Wheeler, the head of Mobile County Department of Human Resources, wrote Ms. Wyatt a letter improperly refusing her a fair hearing, alleging incorrectly that Ms. Wyatt's day and night licenses had expired prior to the submission of her application for renewal. Ms. Wheeler informed Ms. Wyatt that she was now operating without a license (Appendix A, page A11).

Catherine Phillips, Erin Wheeler, and their counsel were aware that Ms. Wyatt was entitled to a fair hearing (Minimum Standards Excerpt Appendix G, page A41).

The Department of Human Resource Minimum Standards provide for a fair hearing for Ms. Wyatt (Appendix G, page A41). While still refusing to grant Ms. Wyatt her licenses or a fair hearing, Catherine Phillips and Hank Jordan of DHR wrote to John Tyson, Jr. and to various agencies, to attempt to have Ms. Wyatt prosecuted for operating without a license and unpaid for her services. In November 6, 1998, Mary Wyatt filed suit in

the Circuit Court of Mobile County, Alabama, seeking injunctive relief to prevent the Department of Human Resources from taking her day care licenses without the due process of a fair hearing. The Honorable Robert G. Kendall granted the Plaintiff's motion for an injunction preventing the revocation of her licenses on December 4, 1998, but the Department of Human Resources continued to refuse Ms. Wyatt a fair hearing.

In April of 1999, the Circuit Court case was dismissed without prejudice, the Department of Human Resources having granted Ms. Wyatt her daytime license, and been forced to allow Mary Wyatt a fair hearing on the denial of her nighttime license.

As the result of the denial of her right to a fair hearing, Mary Wyatt suffered financial losses.

Catherine Phillips, Erin Wheeler, and the Mobile County Department of Human Resources caused Mary Wyatt not to be paid and reported her to the Mobile County District Attorney's Office for prosecution while she was awaiting her fair hearing, in violation of their own procedures (Appendix G, page A41).

Following a hearing held on October 26 and 27, 1999, the Honorable William Prendergast found in favor of Mary Wyatt in every issue presented, and Ordered that Ms. Wyatt's nighttime license be issued (Appendix A, page A26). The Defendants did not appeal this ruling.

Ms. Wyatt filed the present case in the Circuit Court of Mobile County, Alabama on February 10, 2000, naming the Mobile County Department of Human

Resources, Erin Wheeler, individually and as head of Mobile County Department of Human Resources, and Catherine Phillips, individually, and in her capacity as an employee of Mobile County Department of Human Resources, as Defendants. This Circuit Court case was assigned to the Honorable Herman Thomas. On April 8, 2000, the Defendants filed a motion to dismiss the Plaintiff's Complaint. After a hearing on the motion to dismiss, the Court denied the Defendants' motion on May 23, 2000 (Appendix B, page A29). The Defendants then filed a motion to reconsider. In this motion to reconsider, the Defendants ask the Court to reconsider only those claims against the Department of Human Resources, and not those against Catherine Phillips and Erin Wheeler. The Court denied the motion to reconsider on July 24, 2000 (Appendix C, page A30). The Defendants then petitioned for a writ of mandamus from the Court of Civil Appeals of the State of Alabama. That petition was denied on August 22, 2000, (Appendix D, page A31). The Defendants then petitioned for a writ of mandamus from the Supreme Court of the State of Alabama. The writ of mandamus was granted as to the Department of Human Resources and Catherine Phillips and Erin Wheeler in their official capacities, and Denied as to Catherine Phillips and Erin Wheeler in their individual capacities (Appendix E, page A32).

A timely filed petition for Rehearing by Mary Wyatt was denied on September 7, 2001. Ms. Wyatt now appeals to the Supreme Court of the United States of America.

Reasons for Granting the Petition

Because of sovereign immunity, State agencies have great power over the citizens of their States. .It is essential to an ordered society that a citizen knows that if he passes a written and road test he may drive, that he may register to vote and then exercise that privilege, and that the low bidder on a government contract will be awarded that project. The United States Constitution forbids the taking of a right without due process of law.

It is both dangerous and against public policy to allow state agencies to violate their own policies with impunity. Procedural due process violations are among the rare instances in which sovereign immunity is not absolute. Mary Wyatt was denied a fair hearing because DHR violated its own policies. That DHR was later forced to follow its own policies does not mean that Mary Wyatt's procedural due process rights were not violated.

The Alabama Supreme Court, in relying on the Bowman v. Alabama Department of Human Resources, 857 F.Supp.1524 (M.D.Ala.1994) case, ignored any procedural due process violations by DHR, because Ms. Wyatt was eventually able to sue out of DHR that which was her procedural right: a fair hearing. The Bowman case addresses substantive due process, not an absolute right, but the Alabama Supreme Court finds substantive and procedural due process violations to be equal, an error.

In the Bowman case, that Court specifically finds that, because the Bowmans were timely given a fair hearing, the procedural remedy made available to them by the State, their due process rights were not violated. However, Mary Wyatt was denied a fair hearing. She

had togo to the Mobile County Circuit Court, which forced DHR to grant her a fair hearing. In Bowman, that Court finds that if the Bowmans had been denied a fair hearing, their procedural due process rights would have been violated. That is exactly what happened in our case: Ms. Wyatt's procedural due process rights under the 14th Amendment were violated by DHR's persistent denial of a fair hearing. That she was later able to get the Mobile County Circuit Court to force DHR to give her a fair hearing does not mitigate the staggering losses she suffered while suing, because of DHR's failure to follow its own procedures, nor should it absolve DHR's responsibility for those losses. She was denied a fair hearing, and Bowman says that denial constitutes a denial of her procedural due process rights.

Bowman does say that a fair hearing can be post-revocation of a day care license, but cannot be refused. That Ms. Wyatt was able to sue in Mobile County Circuit Court, then obtain a fair hearing, does not vitiate DHR's refusal of that hearing. Under Bowman, DHR violated Mary Wyatt's procedural due process rights under the 14th Amendment to the United States Constitution.

Conclusion

For the foregoing reasons, the petition should be granted.

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